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In The
# Supreme Court of the United States

UNITED STATES OF AMERICA, *ET AL.*,
APPELLANTS,

v.

AMERICAN LIBRARY ASSOCIATION, *ET AL.*,
APPELLEES.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

## BRIEF OF *AMICI CURIAE*, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES, CONCERNED WOMEN FOR AMERICA, NATIONAL COALITION FOR THE PROTECTION OF CHILDREN & FAMILIES, AND CITIZENS FOR COMMUNITY VALUES, IN SUPPORT OF THE UNITED STATES, *ET AL.*, APPELLANTS

KRISTINA A. BULLOCK
*Counsel of Record*
BRUCE A. TAYLOR
*Co-Counsel*
National Law Center
for Children and Families
3819 Plaza Drive
Fairfax, Virginia 22030
(703) 691-4626

JANET M. LARUE
*Co-Counsel*
Concerned Women for America
1015 Fifteenth Street, NW #1100
Washington, D.C. 20005
(202) 488-7000

39 pp

## TABLE OF CONTENTS


TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

CONSENT TO FILE BRIEF 2

SUMMARY OF ARGUMENT 2

LAW AND ARGUMENT

I. THE TRIAL COURT COMMITTED CLEAR ERROR WHEN IT BASED ITS DECISION ON FACTS NOT SUPPORTED BY THE RECORD 3

II. THE DISTRICT COURT ERRED IN APPLYING FIRST AMENDMENT SCRUTINY TO A CONGRESSIONAL ACT THAT PROHIBITS FEDERAL FUNDING OF UNPROTECTED SPEECH IN PUBLIC LIBRARIES 17

III. CIPA IS A CONSTITUTIONALLY VALID AND REASONABLE ACT AND THE COURT BELOW ERRED IN FAILING TO FIND IT CONSTITUTIONAL 20

IV. EVEN IF THE CIPA AMENDMENTS WERE UNCONSTITUTIONAL, THIS COURT SHOULD STILL REVERSE THE DECISION OF THE DISTRICT COURT 28

CONCLUSION 30

APPENDIX: DESCRIPTIONS OF *AMICI CURIAE* 31

SERVICE 35

## TABLE OF AUTHORITIES

**CASES**

*American Library Ass'n v. Reno*, 33 F.3d 78 (D.C. Cir. 1994) 20
*American Library Ass'n v. United States*, 201 F.Supp.2d 401 (E.D. Pa. 2002) *passim*
*Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986) 19
*Arkansas Ed. Tel. Comm'n v. Forbes*, 523 U.S. 66 (1998) 21
*Ashcroft v. ACLU*, ___ U.S. ___, 122 S.Ct. 1700 (2002) 18
*Ashcroft v. Free Speech Coalition*, ___ U.S. ___, 122 S. Ct. 1389 (2002) 18
*Broadrick v. Oklahoma*, 413 U.S. 601 (1973) 9
*Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985) 18
*Buckley v. Valeo*, 424 U.S. 1 (1976) 29
*Champlin Refining Co. v. Corp. Comm'n of Ok.*, 286 U.S. 210 (1932) 29
*Cornelius v. NAACP Legal Defense & Ed. Fund*, 473 U.S. 788 (1985) 7, 22
*FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) 18
*Ginsberg v. New York*, 390 U.S. 629 (1968) 19
*Good News Club v. Milford Central School*, 598 U.S. 98 (2001) 7, 21
*Hamling v. United States*, 418 U.S. 87 (1973) 19
*Massachusetts v. Oakes*, 491 U.S. 576 (1989) 18
*New York v. Ferber*, 458 U.S. 747 (1982) 19
*Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973) 18
*Regan v. Time, Inc.*, 468 U.S. 641 (1984) 28-29
*Reno v. ACLU*, 521 U.S. 844 (1997) 18
*Rosenberger v. Rector and Visitors of U. of Va.*, 515 U.S. 819 (1995) 21-22
*Roth v. United States*, 354 U.S. 476 (1957) 19



*Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989) 18-19
*United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000) 18
*Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) 20

**STATUTES AND CONGRESSIONAL RECORD**

*Children's Internet Protection Act of 2000*, Pub. L. No. 106-554 *passim*
*Telecommunications Act*, "E-rate discounts", 47 U.S.C. § 254 4, 28-29
*Library Services and Technology Act*, 20 U.S.C. § 9101, *et seq.* 28-29
Congressional Record:
Senate Reports, Nos. 105-226, 106-141;
Senate Hearings, Nos. 105-214, 105-615, 106-603 20, 28

**OTHER AUTHORITIES**

David Burt, *Dangerous Access 2000* 15, 20
David Burt, *The Facts on Filters* 12
Blaise Cronin, *What a Library Is Not*, Library Journal 15
JAMA, Kaiser Fam. Found., *Does Pornography-Blocking Software Block Access to Health Information on the Internet?* 11-12

## INTEREST OF *AMICI CURIAE*

*Amici Curiae*, the National Law Center for Children and Families, Inc. (*www.NationalLawCenter.org*), Concerned Women for America, Inc. (*www.CWFA.org*), the National Coalition for the Protection of Children & Families, Inc. (*www.NationalCoalition.org*), and Citizens for Community Values, Inc. (*www.CCV.org*), are all non-profit educational and public interest organizations with historically active roles in America's state and federal efforts to enact valid laws regulating obscenity, child pornography, indecency, materials that are harmful to minors or obscene for minors, and to educate public officials, law enforcement officers, and the public on the just and fair enforcement of such laws and on the harmful effects of such materials on society and individual victims.

The unavoidable and overwhelming presence of commercial and public pornography online is a valid subject for technologically assisted restriction under discretionary funding subsidies and your *amici* share the concerns of Congress and the public in defending the necessity and constitutionality of the *Children's Internet Protection Act of 2000* ("CIPA") and hereby present arguments supportive of the Act which may not otherwise be presented to the Court by the parties. Your *amici curiae* submit that the decision below is contrary to the true facts and applicable law and that the findings and intent of Congress support the validity of this Act. [1]

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[1] This Brief of *Amici Curiae* was authored by Kristina A. Bullock, Legal Counsel, and Bruce A. Taylor, President & Chief Counsel, of the National Law Center for Children and Families, and Janet M. LaRue, Chief Counsel, of Concerned Women for America, and no part of the brief was authored by any attorney for a party. No person or entity other than these *amici curiae* or their counsel made any monetary contribution to the preparation or submission of this brief. Rule 37 (6).

## CONSENT TO FILE BRIEF

Appellants and Appellees, through their counsel of record respectively, have granted consent to the filing of this Brief of *Amici Curiae* in support of Appellants. Their letters of consent are on file with the Clerk of the Court.

## SUMMARY OF ARGUMENT

The *Children's Internet Protection Act* is a reasonable law that effectively addresses Congress' concern about the proliferation of pornography accessed in our public libraries. Filter technology effectively protects library patrons from the vast majority of sexually explicit materials on the Internet.

The District Court committed clear error by basing its decision to overturn CIPA on facts not supported by the record. The court made clearly erroneous findings about CIPA's actual requirements. These factual errors were the foundation for the case's wrongly decided outcome.

The court below incorrectly applied strict scrutiny, analyzing CIPA as though it regulated speech protected by the First Amendment. Nothing in the law justifies such an analysis of the Act's requirement to filter unprotected obscenity and child pornography. The First Amendment only applies to protected expression and CIPA does not regulate protected expression

CIPA's requirement that recipients attempt to filter unprotected forms of obscenity should survive any level of scrutiny. The funding conditions neither remove nor criminalize any speech or materials, illegal or otherwise.

Finally, even if Congress lacked the power to enact the CIPA amendments, the lower court erred by severing the conditions and judicially mandating Congressionally appropriated assistance without the clearly expressed intent of Congress.



## ARGUMENT

### I. THE TRIAL COURT COMMITTED CLEAR ERROR WHEN IT BASED ITS DECISION ON FACTS NOT SUPPORTED BY THE RECORD.

#### A. THE RECORD DOES NOT SUPPORT THE DISTRICT COURT'S ERRONEOUS CONCLUSIONS OF LAW; KEY FACTUAL FINDINGS OF THE COURT ARE INACCURATE AND INADEQUATE TO STRIKE AN ACT OF CONGRESS

*Amici curiae* submit that the lower court made a clearly erroneous finding about what CIPA actually requires. These errors served as the foundation for the trial court's decision and wrongly dictated the outcome of the case.

The court found CIPA requires public libraries to filter virtually all pornography without blocking a substantial amount of protected speech. The court invalidated the Act because filters cannot block all illegal speech without blocking any unprotected speech. "In sum, filtering products are currently unable to block only visual depictions that are obscene, child pornography, or harmful to minors ... while simultaneously allowing access to all protected speech." *American Library Ass'n v. United States,* 201 F.Supp.2d 401, 450 (E.D. Pa. 2002) (Hereafter, "*ALA v. U.S.*").

However, CIPA does not require that <u>all</u> illegal speech <u>must</u> be blocked in order to comply with the law. CIPA only requires libraries to <u>*try*</u> to block only hard-core pornography that the library staff <u>*considers*</u> to be within the scope of the tests for obscenity, child pornography, and, on minors' terminals, pornography that is harmful to minors--and only on those Internet terminals for which it accepts the federal E-rate subsidies-- not on all or any other computers the library

may have.[2] The Act gives libraries discretion in implementing the operations of filters. (In fact, a library desiring to provide unfiltered access could, like anyone else, pay $10-24 per month for Internet access on other terminals.)

By requiring near perfection in filters, the District Court imposed an unreasonable (and impossible) burden on the Act and a burden on libraries that CIPA does not require.

Your *amici* maintain that the *Children's Internet Protection Act* is a constitutionally valid and necessary measure that was enacted to protect against publicly subsidized access to hard-core pornography and child pornography by adults, as well as access by minor children to those two types of pornography, plus soft-core pornography that could be considered obscene for minors ("harmful to minors"), while in public libraries and schools that accept taxpayer support for "E-rate" Internet access.

Congress found this problem to be of enormous proportions. The court below also acknowledged that "the volume of pornography on the Internet is huge...." *ALA v. U.S.*, 201 F.Supp.2d at 406. Yet, the court refused to uphold CIPA and severed the filtering condition from the purse-string, mandating that libraries receive the E-rate subsidies without condition. (*Amici* submit this judicially-created "entitlement" program is outside the power of courts to promulgate. Moreover, others will attempt to apply this rule

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[2] The *Children's Internet Protection Act*, §§ 1712 & 1721, requires Internet protection policies that include filters to protect against access through subsidized library computers to visual depictions that are obscene, child pornography, and harmful to minors, for minors; and obscene and child pornography, for adults. The law does not require that all such visual depictions MUST be blocked or that all terminals use a filter. In addition, § 1732 gives libraries sole discretion about what to filter for those three categories of pornography and to set their filters accordingly. For "E-rate discounts", *see* 47 U.S.C. § 254 (h)(6)(B) & (C).



to school subsidies when those provisions of CIPA are challenged in reliance on the District Court's opinion.)

The action by the trial court to acknowledge the pervasiveness of the pornography problem in public libraries, yet persist in striking down CIPA based on, at worst, an average filter error rate of less than one percent, is clear error and an abuse of discretion.

The findings of the court revealed that using filter technology on public library computers results in less than one percent overblocking of protected speech.[3] Less than one percent is truly minimal compared to the enormous amounts of illegal material that are effectively blocked. This provides an important and substantial amount of protection to our nation's children against harmful exposure to graphic, sexually explicit images on the computer.

Throughout its opinion, the court described the number of wrongly blocked sites as "substantial".[4] We submit that this conclusion is not supported by the evidence. It is an

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[3] Plaintiffs' witness Benjamin Edelman created a list of over 500,000 URLs, which he fed through four filtering programs, resulting in a list of 6,777 URLs that were blocked by the four filters combined. Mr. Edelman forwarded his list of blocked Websites to Prof. Joseph Janes at the University of Washington, who reviewed a small sample of the sites and concluded that between 4,403 and 4,783 sites were, in his opinion, "wrongfully" blocked. *ALA v. U.S.*, 201 F.Supp.2d at 443-45. His own percentage of wrongly blocked (or overblocked) sites was, therefore, between 0.88% and 0.96%, less than one percent, a fact not discussed or noted in the lower court's opinion.

[4] For instance, the court found, without the evidence: "At least tens of thousands of pages of the indexable Web are overblocked by each of the filtering programs...." (emphasis added). *ALA v. U.S.*, at 449. This exaggerates the testimony of Edelman and Janes, who found fewer than 5,000 sites out of about 550,000, or less than 1%, that even they thought "wrongly" blocked.

inaccurate and misleading finding of fact leading to an erroneous conclusion of law. Even the Plaintiffs' witnesses could only find a minimal error rate of less than one percent of sites they thought were erroneously blocked. This record leads to a conclusion that the court relied on flawed evidence to support its basis for invalidating CIPA. This Court should find that Plaintiffs' opinion evidence does not prove "substantial" overbreadth or unconstitutional overbreadth or an unconstitutional prior restraint on the speech itself and reverse the decision below.

While the court incorrectly raised the bar for what it thought library filters must not underblock, (*i.e.* requiring that all illegal speech be blocked), we submit that any underblocking is actually consistent with CIPA. As mentioned above, CIPA aims to protect against three types of illegal pornography, but does not require that all such images be blocked completely for adults or minors.[5] Congress, at least, recognizes the limits of the technologies involved and asked only that libraries and schools use filters to try to block what they think is obscene, child porn, or obscene for minors.

The court also raised the bar for what library filters must not overblock, imposing a false standard that CIPA does not require, and that no filter can meet.

However, *amici* submit that some overblocking of some (arguably or admittedly) protected speech is not inconsistent with the First Amendment for two reasons:

**1.** The filtering requirement is reasonable. *Amici* submit that it is reasonable to filter access to the huge amount of illegal and harmful Internet pornography on a federally subsidized terminal in a public library, even if a contested number of Websites amounting to less than 1% of potentially relevant material is also temporarily "blocked".

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[5] *Id.*



This is especially so in light of the compelling government interests Congress has addressed in protecting our children and even "consenting adults" from instant and unfettered exposure to adult and child pornography. "[T]he restriction must be 'reasonable in light of the purpose served by the forum'." *Good News Club v. Milford Central School*, 598 U.S. 98, 106 (2001) (citing *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985)).

**2.** The disabling provision is reasonable. CIPA affords librarians the ability to unblock filter technology for patrons doing bona fide research who have been blocked from a legitimate site that is protected speech. At least when a filter blocks access to a site, the site is disclosed in the list of returned search links (as Edelman & Janes found) and the user knows which sites are blocked and can assess whether to seek access to the site, either from a librarian to unblock the site or at any other time or place by calling up that URL on any non-filtered computer anywhere else in the world. A filter does not affect the site itself; it notifies the user that the site exists but has been found within a blocked category and will not be accessed at this time, place, and manner, but may be accessed by request or at any other time, place, and manner outside the bounds of this filtered terminal. In fact, the embarrassment argument can be seen as disingenuous because there is no evidence for it (other than the lay opinion of librarians that they assumed patrons would be too embarrassed to ask for unfiltered access). If a patron was not too embarrassed to view those sites on a public terminal, they would be no less embarrassed to ask for help.

### B. The Factual Findings Of The Court Below Are Not Supported By The Evidence

*Amici* respectfully submit that there are several critical factual findings made by the court below that are clearly

erroneous and not supported by the evidence, including: 1) that filters block a "substantial" or "huge" amount of protected speech; 2) that filters "substantially" underblock illegal speech; 3) that filter technology is ineffective; 4) that a lack of requests by library patrons to unblock sites means patrons are reluctant or embarrassed to request unblocking of legitimate sites, and 5) that Internet users would receive all available information if it were not for filters.

**1.** The evidence at trial does not support the court's finding that filters always block "substantial" amounts of speech protected by the First Amendment.

However, this finding that an effective filter will necessarily overblock a "substantial" amount of protected speech is actually countered by Plaintiffs' witness. Mr. Edelman (*see supra* n. 3) used different settings for the different filters and chose to block categories other than just hard-core and child porn for adults and soft-core porn and nudity for minors, as a library would under CIPA, so of course Mr. Edelman blocked more than CIPA requires and more than any library would block using these same filters.[6] Prof. Joseph Janes then examined some of Edelman's blocked sites and concluded that between 4,403 and 4,783 of those blocked sites were wrongly blocked. *See ALA v. U.S.*, at 445. Calculated out, wrongly blocked sites totaled less

[6] Mr. Edelman, Plaintiffs' expert, is a Harvard University student who works as a systems administrator at Harvard Law School. See *ALA v. U.S.*, at 442, n.14. He is also Plaintiff in a suit against N2H2 to try to compel filter companies to disclose their proprietary lists of sites for various categories--from sex to gambling, *etc. Benjamin Edelman v. N2H2, Inc.*, D.Mass. No. C.A. 02-11503-RGS, filed 07/25/02. *See* ACLU press release and link to Complaint, at *http://archive.aclu.org/issues/cyber/Edelman_N2H2_feature.html*



than one percent.[7] In other words, less than one percent of what the filters blocked was assumed by Plaintiffs' experts to be protected speech and therefore erroneously blocked. (Meaning filters had 99% accuracy in correctly blocking.)

Less than one percent "error" rate, in this instance, should not be held "substantial", in the constitutional sense under these circumstances,[8] especially compared to the vast amounts of pornography --hundreds of thousands of illegal porn sites[9]-- that were effectively blocked from access.

The court did not specifically point out the small percentage of overblocking that occurred in the test by Plaintiffs' witnesses. Instead, it focused on large sounding numbers, like how many thousands of URLs were assumed to be erroneously blocked. The court also extrapolated Prof. Janes' findings and concluded, without support in the record, "many times the number of pages that Edelman identified are erroneously blocked by one or more of the filtering programs that he tested." *ALA v. U.S.*, at 445. The court, in essence, substituted its opinion for the facts in the record and committed clear, reversible error.

*Amici* submit that the court's method of finding overblocked sites was inaccurate and misleading. The court made a finding that all of the studies by Plaintiffs' and

[7] The number of wrongly blocked sites according to Prof. Janes was between 4,403 and 4,783 out of over a half million sites. These critics' best percentage of error is less than one percent.

[8] Even for a criminal law, unconstitutional overbreadth must be not only "real, but substantial as well." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

[9] The court below recognized in its findings "the volume of pornography is huge…" with "more than 100,000 pornographic Web sites that can be accessed for free and without providing any registration information, and tens of thousands of Web sites contain child pornography." *ALA v. U.S.*, at 406.

Government's witnesses[10] "suffer from various methodological flaws." *ALA v. U.S.*, at 437. Nevertheless, the court relied on one "flawed" study to find "substantial" overblocking. Though the court admitted to valid criticisms of their methodology, it still relied on Edelman-Janes to find that a few thousand URLs were erroneously blocked out of over 500,000 sites. *ALA v. U.S.*, at 445. *Amici* submit that the trial court erred in relying solely on this study as the basis for quantifying overblocking.

Finally, the court assumed "huge" overblocking problems with filters, based on apparent limitations in technology. *See ALA v. U.S.*, at 448 (emphasis added):

> [A]lthough software filters provide a relatively cheap and effective, albeit imperfect, means for public libraries to prevent patrons from accessing speech that falls within the filters' category definitions, we find that commercially available filtering programs erroneously block a <u>huge</u> amount of speech that is protected by the First Amendment.

The facts simply do not support this assumption by the court below.

**2.** The court pointed to apparent limitations in filter technology as evidence of underblocking pornographic material. "These shortcomings necessarily result in significant underblocking." *ALA v. U.S.*, at 448. The court decided that the process by which filtering companies classify sites as pornographic necessarily leads to substantial underblocking. *Id.* at 432.

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[10] The Government presented studies from two expert witnesses and from one librarian fact witness. Plaintiffs presented their testimony against filters through the opinions of their experts, Messrs. Edelman and Janes. *ALA v. U.S.*, at 437-46.



However, the Finnell study[11] concluded that there was less than 1% underblocked. *ALA v. U.S.*, at 440. *Amici* assert that this is not a "significant" underblocking problem. Interestingly, the court chose to disregard Finnell's study of underblocking, because it assumed the patrons knew the filters were on the computers [but only in two of the libraries]. The court made an assumption that patrons "<u>may have</u> refrained from attempting to access sites with sexually explicit materials, or other contents that they knew would probably meet a filtering program's blocked categories." *ALA v. U.S.*, at 440. (This should be a valid deterrent.)

Since filters are not able to perfectly block all pornography without also blocking any protected sites, the court categorically rejected the use of filters as a legitimate means for complying with CIPA. *See ALA v. U.S.*, at 450.

*Amici* submit that filters are highly effective, despite some over or underblocking. In fact, a recent, independent, scientifically sound, peer reviewed, and unbiased study of institutional filters (of the type used by libraries and schools) proved that filters are at least 87% accurate in blocking access to porn sites. Properly configured to CIPA compliance settings, filters blocked only 1.4% of sexually related health sites. The study was commissioned by the Kaiser Family Foundation, conducted at the University of Michigan Medical School, and reported in the Journal of the American Medical Association.[12] The conclusion was, using

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[11] Government expert witness Corry Finnell studied the Internet logs of public library systems in Tacoma, WA; Westerville, OH; and Greenville, SC. He is an expert on evaluating Internet access logs and developed a reporting tool for N2H2.

[12] *See "Does Pornography-Blocking Software Block Access to Health Information on the Internet?"* JAMA, 12-11-02, Vol. 288, No. 22, p. 2887; abstract is posted at *http://jama.ama-assn.org/issues/v288n22/abs/jtv20005.html* and the full JAMA

"CIPA compliance" settings: "At their least restrictive settings, overblocking of general health information poses a relatively minor impediment."

Finally, *amici* respectfully direct the Court's attention to independent research on the effectiveness of filters, as reported by David Burt, which found:

> "A total of 26 published laboratory tests of filtering software effectiveness have been identified in technology and consumer print publications including PC Magazine, Info World, Network Computing, Internet World, eWeek, and Consumer Reports from 1995-2001. Ten separate software laboratories, such as ZD Net Labs, Consumer Reports Labs, Camden Associates, and IW Labs conducted the tests.
>
> The aggregated results of the independent research indicate that Internet software filters are largely effective, though not perfect, at blocking web sites [emphasis added]."[13]

**3.** The court acknowledged that "[n]o quantitative evidence was presented comparing the effectiveness of filters and other alternative methods used by libraries to prevent patrons from accessing visual depictions that are obscene, child pornography, or in the case of minors, harmful to minors." *ALA v. U.S.*, at 441. The trial court should have required comparisons of restrictions in library "Acceptable Use" policies to the requirements in CIPA. The court found

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article available from that site. The Kaiser study and database links are available at *http://www.kff.org* from the study page. The JAMA article also recognized the DOJ commissioned study at *http://www.etestinglabs.com/clients/reports/usdoj/usdoj.pdf* that was submitted to the court below.

[13] David Burt, *The Facts on Filters: A Comprehensive Review of 26 Independent Laboratory Tests of the Effectiveness of Internet Filtering Software*, N2H2 (March 2002), available at *http://n2h2.com/pdf/TheFactsOnFilters.pdf*.



"approximately 95% of libraries with public Internet access have some sort of 'acceptable use' policy or 'Internet use' policy governing patrons' use of the Internet. ... These policies vary widely." *ALA v. U.S.*, at 422. The mere existence of use policies has not deterred porn-surfing or sexual misconduct. The record lacks evidence that such policies are enforced, much less effectively enforced.

Factual comparisons of policies versus filters are important in assessing their relative effectiveness. The trial court should have evaluated the kind of "acceptable use" policies in existence, degrees to which they are enforced, whether policy requirements are co-extensive with CIPA's requirements, and whether filters are less restrictive than strictly enforced policies or direct supervision of patrons.

Public libraries have "problems" when relying on "Internet Use" policies without filtering. Greenville County Library adopted a use policy after public outcry over men routinely using the library to get pornography. The policy failed to curb the problems. The court noted, *ALA v. U.S.*, at 424:

> Even after the Board implemented the privacy screens and later the "tap-on-the-shoulder" policy combined with placing terminals in view of librarians, the library experienced a high turnover rate among reference librarians who worked in view of Internet terminals. Finding that the policies that it had tried did not prevent the viewing of sexually explicit materials in the library, the Board at one point considered discontinuing Internet access in the library. The Board finally concluded that the methods that it had used to regulate Internet use were not sufficient to stem the behavioral problems that it thought were linked to the availability of pornographic materials in the library. As a result, it implemented a mandatory filtering policy.

The Greenville Library had success by installing filters on its library computers, stating: "Since installation of the N2H2 Proxy Server in July of 2000, there have been no Internet related incidents involving library security staff, no complaints by the public and only twelve (12) web sites have had to be blocked locally and twelve (12) sites have been unblocked locally."[14]

Next, the court accepted Plaintiffs' unsupported assertion that "because public libraries are public places, incidents involving inappropriate behavior in libraries (sexual and otherwise) existed long before libraries provided access to the Internet." *ALA v. U.S.*, at 424.

In a published report by David Burt, a direct survey of 452 public library systems, with 27% responding, admitted 2,062 problem incidents.[15] *Dangerous Access* disclosed:

> Many of the incidents were highly disturbing, as librarians witnessed adults instructing children in how to find pornography, adults trading in child pornography, and incidents involving both adults and minors engaging in public masturbation at Internet terminals. Analysis of computer logs from just three urban libraries revealed thousands of incidents that

[14] Brief *Amicus Curiae* of Family Research Council in Support of Defendants, filed below in *American Library Ass'n v. United States, et al.* (quoting Greenville County Library, *Greenville County (SC) Library System Case Study for N2H2* (June 2001), available at: *http://www.n2h2.com/pdf/library_case_study.pdf.*)

[15] David Burt, *Dangerous Access 2000 Edition: Uncovering Internet Pornography in America's Libraries*, at 5 (Washington, D.C.: Family Research Council, 2000), available at *http://www.frc.org/get/bl063.cfm*. Mr. Burt, founder of *www.FilteringFacts.org*, was then a librarian at Oswego Public Library in Oregon and is now employed by N2H2 filter company, a provider of industrial grade filter software to schools, libraries, businesses, and public and private institutions.



> went unreported, indicating that the 2,062 incidents represent only a fraction of the total incidents nationwide.
>
> The incidents suggest that Internet policies alone do not deter crime on library Internet stations. The incidents supplied by libraries included 172 incidents where librarians described crimes being committed, such as the accessing of child pornography, the accessing of material described by the librarians as "obscene," public masturbation, and adults exposing children to pornography. In only six of these incidents (3.5 percent) were the police notified.[16]

The court erred in its finding that public libraries have suffered the same extreme misconduct from patrons in the past that they now experience with the advent of unfiltered, unrestricted access to all the pornography on the Internet. No evidence shows past problems as significantly and substantially sexual in nature, or so clearly connected to pornography. This is what Internet porn brought to our libraries.[17]

**4.** The evidence does not support the lower court's assumption that the lack of unblocking requests in libraries reflects patron embarrassment or reluctance. In fact, the court goes out of its way to invent a reason for the relatively low numbers of requests to unblock sites in several public libraries: "In light of the fact that a substantial amount of overblocking occurs in these very libraries ... we find that the lack of unblocking requests in these libraries does not reflect the effectiveness of the filters, but rather reflects patrons' reluctance to ask librarians to unblock sites." *ALA v. U.S.*, at

[16] *Dangerous Access 2000 Edition*. at 1.

[17] *See* Blaise Cronin, "What a Library Is Not", Library Journal, 11/15/2002; *http://libraryjournal.reviewsnews.com/index.asp?layout=articlePrint&articleID=CA256587*

427. A lack of patron requests to unblock could actually mean that the filters were effective.

The court assumed that some overblocking is to be expected and that, therefore, patrons must have felt too embarrassed or timid to ask for unblocked access. This is not a fact based on evidence.

**5.** The court made a crucial and central assumption that, without filters, an Internet user would receive all available information that is protected speech. The court did not refer to any evidence to support this.

This assumption, moreover, is not true and everyone knows it. Overlooking this obvious fact of Internet life warrants a remand to show to the world that the "law knows what everyone knows" and will consider all factors leading to an accurate factual conclusion in such an important case.

Search engines that "bring" lists of potential information to Web surfers are actually the first information "filters" that "restrict" access to some sites. The court should have taken notice of the interaction of search and filter technologies and practices and asked the parties to address it in their presentations.

A user who types the same search on two different days will expect to come up with different sets of information, even on the same search engine. Different search engines return different lists of URLs. As the court noted: "Users may find content on the Web using engines that search for requested keywords. In response to a keyword request, a search engine will display a list of Web sites that may contain relevant content and provide links to those sites. Search engines and directories often return a limited number of sites in their search results....." *ALA v. U.S.*, at 417.

An important fact to notice here is that a filter will only block access to sites a search engine has found—and provides a list or record of the sites denied access. When a search engine fails to find a site on a subject, the user never



knows of its existence. CIPA, therefore, can actually facilitate the knowledge of and access to sites by letting Internet users know which sites are returned and allowing the patron to ask for unfiltered or unblocked access at that time or go to another place to call up those known URLs.

The court also went into considerable detail explaining a phenomenon called the "Deep Web" in which not all sites are publicly indexable, or reachable through searches. *ALA v. U.S.*, at 418-19. This is another example of how some protected speech would not come up in an Internet search, even if there is no filter technology operating on the computer. The assumption that all protected speech can be reached, except for the use of filters, is clearly erroneous. This is an important issue that should have been clarified.

The foregoing assumptions and unsupported findings contributed to the court's erroneous finding that filter technology is unable to address the problems targeted by CIPA and that Congress could not require libraries to try using filters in exchange for subsidized Internet access.

## II. THE DISTRICT COURT ERRED IN APPLYING FIRST AMENDMENT SCRUTINY TO A CONGRESSIONAL ACT THAT PROHIBITS FEDERAL FUNDING OF UNPROTECTED SPEECH IN PUBLIC LIBRARIES

First Amendment scrutiny is only applicable to protected expression. CIPA by its terms does not regulate protected expression. CIPA requires public library recipients of federal subsidies to use filter technology to block access to illegal pornography lacking constitutional protection.

The District Court, however, analyzed CIPA as if it were a direct regulation of protected speech. The court compounded its error by applying strict-scrutiny to the Act. No First Amendment analysis was warranted by the Act's requirement to filter unprotected obscenity and child

pornography. *See United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 829-30 (2000) (Thomas, J., concurring); *Ashcroft v. ACLU*, ___ U.S. ___, 122 S.Ct. 1700, 1707 (2002) (Thomas, J.); *Ashcroft v. Free Speech Coalition*, ___ U.S. ___, 122 S. Ct. 1389, 1399 (2002) (Kennedy, J.); *Reno v. ACLU*, 521 U.S. 844, 874, 878, n. 44 (1997) (Stevens, J.), and *FCC v. Pacifica Foundation*, 438 U.S. 726, 745 (1978).

In *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 124 (1989), the majority affirmed that strict-scrutiny analysis applies to protected speech, but not to obscenity, which is unprotected, citing *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 69 (1973).

Appellees make a facial challenge to the Act, which does not regulate any constitutionally protected speech. CIPA conditions receipt of federal funds by recipient libraries on blocking access to three types of pornography lacking constitutional protection. To apply First Amendment scrutiny, much less strict-scrutiny, to materials having no First Amendment protection erases the distinction between protected and unprotected speech. This is especially true when the regulation at issue is an indirect funding regulation that neither criminalizes nor removes any speech from public access, it simply impedes "instant access" in public libraries that accept federal funding and regulations.

Overbreadth analysis is not applicable unless the regulation is aimed at protected speech. The Court in *Massachusetts v. Oakes*, 491 U.S. 576, 584 (1989), held that: "Overbreadth is a judicially created doctrine designed to prevent the chilling of protected expression." *See also Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 508-09 (1985) (O'Connor, J., concurring), that overbreadth analysis should not apply to obscenity laws.

CIPA does not suffer the infirmities found in *Playboy* and *Reno v. ACLU, supra,* because it does not require



recipient libraries to block access to indecency, nor block adult access to material harmful to minors. CIPA is directed at unprotected materials, *i.e.*, obscenity, child pornography, and, for minors, pornography that is harmful to minors. *See Roth v. United States*, 354 U.S. 476, 485-86 (1957); *New York v. Ferber*, 458 U.S. 747, 771, 773-74 (1982); *Ginsberg v. New York*, 390 U.S. 629, 639, 641 (1968).

Even though filters block instant access to some constitutionally protected speech, it is an incidental effect of compliance and is not facially unconstitutional. *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 702-07 (1986). CIPA requires protected speech that is "wrongly" or mistakenly blocked to be unblocked. Asking a librarian to unfilter a terminal or a Website is no greater "burden" than requesting a librarian to locate an unfound or wrongly-shelved book.

Likewise, that filters are imperfect is no more a constitutional hurdle than that different juries can reach opposite verdicts in judging whether the same material is obscene in criminal cases, in which concern for constitutional rights is greater. *See Roth v. United States*, 354 U.S. at 491-92; *Hamling v. United States*, 418 U.S. 87, 101 (1973); and *Sable*, *supra*, at 125.

Filters are comparable to expert witnesses who give an opinion as to whether material at issue is illegal, but, like expert witnesses, filters do not have the last word – jurors do. Library officials are the jurors who decide whether or not filters have blocked correctly.

CIPA's mandate to attempt to filter unprotected forms of obscenity should survive any scrutiny. Its time, place, and manner method of restricting access to such materials is also within the rationale applied to intermediate scrutiny, or more properly a rational basis test for such a funding regulation that does not remove or criminalize any speech or materials, illegal or otherwise.

CIPA regulates only the place and time in which illegal pornography may be accessed. It does not prevent or prohibit access to any material other than in public libraries that are recipients of its conditional funding. Any "blocked" sites can be viewed at the same place at a later time by having a librarian unfilter the terminal, or may be accessed at the same time at a different place by using any unfiltered computer outside that library. In either event, the site is known to the patron and no content on that site is removed.

Time, place, and manner zoning restrictions were upheld by the Court in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), because the materials continued to be available to the public. In *American Library Ass'n v. Reno*, 33 F.3d 78, 86 (D.C. Cir. 1994), *cert. denied*, 515 U.S. 1158 (1995), the Court of Appeals noted: "Cases like *Renton* make clear, however, that a 'valid basis for according differential treatment to even a content-defined subclass of proscribable speech [exists when] the subclass happens to be associated with particular 'secondary effects of the speech'."

The adverse secondary effects that Congress sought to avoid by enacting the CIPA are enumerated in the Congressional record on CIPA, Senate Hrgs. 105-214, 105-615, 106-603, S. Rep. Nos. 105-226, 106-141, and further documented at length in testimony and the report on porn and sexual misconduct in libraries entitled *Dangerous Access 2000*, *supra*, H.R. Serial Nos. 106-115, 107-33.

## III. CIPA IS A CONSTITUTIONALLY VALID AND REASONABLE ACT AND THE COURT BELOW ERRED IN FAILING TO FIND IT CONSTITUTIONAL

Your *amici* respectfully submit that the trial court erred in finding that CIPA, under strict scrutiny, imposes an unconstitutional burden on accepting federal Internet subsidies. The District Court decided to apply the highest



standard of scrutiny based on its conclusion that Internet use within a public library created a "traditional public forum" within a "limited public forum". In other words, the court agreed that a library is a "limited public forum". It then manipulated the outcome of its forum analysis by creating a rule that Internet use within a library creates its own forum, superceding the context in which it is used. *ALA v. U.S.*, 201 F.Supp.2d at 466. *Amici* submit that conclusion is wrong and assert that the court should have upheld CIPA as valid and reasonable.

This Court explicitly "rejected the view that traditional public forum status extends beyond its historical confines" and state that a "limited public forum" is created by "purposeful governmental action." *Arkansas Ed. Tel. Comm'n v. Forbes*, 523 U.S. 66, 67 (1998). "When the State establishes a limited public forum, the State is not required to and does not allow persons to engage in every type of speech." *Good News Club v. Milford Central School, supra*, 598 U.S. at 106. The "necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

*Amici* submit that both access to the Internet terminals, as well as to a library's collections of open-shelf books, or limited access to its archive and research collections, are all subject to restrictions in public libraries as "limited public forums". Libraries have no right, nor duty, to provide any and all available information to patrons. And patrons have no right, nor entitlement, to any and all information, entertainment, services, or Websites of their choosing or that may exist on the Web. Public libraries are government properties that are not "traditional public forums".

The court attempts to liken the Internet in a public library to a "traditional public forum" because "like

sidewalks and parks, [they] are generally open to any member of the public who wishes to receive the speech that these fora facilitate." *ALA v. U.S.*, 201 F.Supp.2d at 466. However, Internet assembly and speech are not "traditional" in the personal sense. Even if the Internet itself were to be considered a separate "public forum", the court erred by ignoring the context within which the information on the Internet is offered. Libraries do not have to give unfettered access to it, any more than it must give access to speeches and rallies inside its four walls. A public library is not a public street, sidewalk or park, and need not invite any form of assembly, debate, or discussion. To the contrary, a library is strictly regulated as a quiet place and has a long-standing tradition as a place to read and think and gather information, then take it elsewhere to make private or public use of it.

In a "limited public forum" the government is permitted to engage in "content discrimination". "The State may be justified 'in reserving [its forum] for certain groups for the discussion of certain topics'. . . [but] the restriction must not discriminate against speech on the basis of viewpoint" *Good News Club, id.* (citing *Rosenberger, supra*) and the restriction must be "reasonable in light of the purpose served by the forum". *Good News Club, id.* (citing *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985)).

Under forum analysis we submit it would have been more appropriate for the courts to apply a rational basis test, because a public library is a "limited public forum", or, at most, an intermediate level of scrutiny. Any overblocking filters may cause in finding Websites would not remove such speech from the Internet or the public domain, but only limit the time, place, and manner it may be viewed.

Even the lower court acknowledged that "generally the First Amendment subjects libraries' content-based decisions about which print materials to acquire for their collections to



only rational review. In making these decisions, public libraries are generally free to adopt collection development criteria that reflect not simply patrons' demand for certain material, but also the library's evaluation of the material's quality."[18] We agree, and assert that the decision a public library makes about what materials it will include in its collection and offer to the public for perusal, regardless of the form the information comes in (*i.e.* books, magazines, microfiche, recordings, or Internet Websites) should be reviewed by the court using rational basis.

The ALA's Code of Ethics for Librarians states: "We significantly influence or control the selection, organization, preservation, and dissemination of information."[19] Plaintiffs contend it is unconstitutional for librarians to control access to information by means of a software filter, yet claim to apply permissible selection criteria when they "significantly influence or control the selection . . . of information".

Librarians and library administrators are afforded a substantial amount of discretion in selecting materials for the library. Although they have to manage their collections in different ways depending on the form of the information, it does not take away the discretion. In choosing books, libraries decide what to order for the library. In offering information and research over the Internet, they must also choose what to offer patrons and what to place in restricted collections or assign limited access privileges.

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[18] *ALA v. U.S.*, 201 F.Supp.2d at 462 (citing Vernard W. Bell, *Filth, Filtering, and the First Amendment: Ruminations on Public Libraries' Use of Internet Filtering Software*, 53 Fe. Com. L.J. 191, 225 (2001) ("Librarians should have the discretion to decide that the library is committed to intellectual inquiry, not to the satisfaction of the full range of human desires.")).

[19] *See http://www.ala.org/alaorg/oif/ethics.html*

Ignoring the clear intent of the Act, the court below distinguished a library's print collection from information accessed on the Internet, based on whether a librarian is able to review and recommend specific information as "particularly valuable." *ALA v. U.S.*, at 462. *Amici* submit the same discretion applies to information offered via the Internet, even though it is a huge storehouse of information wherein each site could never be individually reviewed.

The sheer volume of information on the Internet prevents librarians from professionally assessing each Website before deciding to personally or automatically review or "filter" certain material. This is no different for an Internet filter program than for commercial search engines, which do not and cannot find and offer access to "all" potential sites that could relate to a user's particular (and inherently imperfect) set of search queries. In this regard, search engines (Google, Alta Vista, Excite, *etc.*) and pre-selected directories (Yahoo! and Yahooligans!) are the first line of "filters" that screen out or "block" knowledge of or access to certain sites that may be "out there" on the Web, but undiscovered during such searches.

The District Court did not ascertain the number of sites that library patrons would not discover because a search engine did not find them. The court could not, therefore, make an accurate finding of fact that the patrons would have access to all relevant information on a topic or category – if only a filter had not intervened.

When a filter blocks access to a site, at least the user knows which site is blocked and can get it later. When a search engine does not find sites, they are not on the list of thousands of potential sites the search engine offers and the user never knows about them.

The court found that the types of "restrictions" caused by filter classifications are "content-based restrictions on speech ... clearly subject to strict scrutiny" *ALA v. U.S.*, at



460. The courts should no more command a halt to using search engines because they are imperfect, than they should command a halt to using filtering software. At least administrators can direct filters to screen at certain levels, or block only CIPA's three categories of pornography, using the legal tests as a guide to their discretion.

These *amici* submit that libraries should have the same discretion in deciding what information it will offer their patrons, regardless of what form the information is found. Further, Congress has the power to ask them to exercise that discretion to prevent access to what the libraries themselves and their designated filter providers consider unlawful pornography, especially in exchange for billions of tax dollars for E-rate Internet access. Therefore, the decisions about what material may be accessed on those public library computers that accept the E-rate should not be subject to strict scrutiny, but only rational basis or, at most, intermediate scrutiny, but CIPA should pass under any test.

We submit that CIPA is narrowly tailored to further several compelling interests and that no less restrictive alternatives exist that effectively addresses those interests.

The court said in order to be narrowly tailored, "it is the government's burden, in this case, to show the existence of a filtering technology that both blocks enough speech to qualify as a technology protection measure, for purposes of CIPA, and avoids overblocking a substantial amount of constitutionally protected speech." *ALA v. U.S.*, 201 F.Supp.2d at 477. "[A]ny filter that blocks enough speech to protect against access to visual depictions that are obscene, child pornography, and harmful to minors, will necessarily overblock substantial amounts of speech that does not fall within these categories." *ALA v. U.S.*, at 476-77 [*sic*]. However, the court exaggerated the "substantial" amount of protected speech that may be overblocked, referring to "blocked sites [that] number in at least the

thousands." *ALA v. U.S.*, at 479. Again, the Edelman-Janes analysis relied on by the court only reflected less than one percent overblocking. *See* n. 3, n. 13, *supra*.

Actually, filter technology is sophisticated enough to effectively block most visual depictions of obscenity, child pornography, and harmful to minors material.[20] Some underblocking is consistent with CIPA and does not detract from CIPA being narrowly tailored. The Act does not require that all visual depictions in these categories must be blocked or risk non-compliance with the law.

CIPA gives librarians discretion to try to filter what they think is "obscene, child pornography and harmful to minors". CIPA targets these categories for exclusion from public library Internet access in order to protect children from harmful pornographic images and to reduce the occurrence of illegal dissemination of obscenity and child pornography. Another study at trial indicated that underblocking could be as low as one percent, or less.[21] However, the court chose to use studies purportedly showing higher percentages of blocking (*i.e.* 6-15%),[22] even though the court said all of the studies suffered from "methodological flaws". *ALA v. U.S.*, at 437.

In the case of CIPA, filtering is the "least restrictive means" because it is the *one and only* effective means available to protect children from visual depictions of

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[20] Note the study that reports: "The aggregated results of the independent research indicate that *Internet software filters are largely effective*, (emphasis ours) though not perfect at blocking web sites." David Burt, *The Facts on Filters: A Comprehensive Review of 26 Independent Laboratory Tests of the Effectiveness of Internet Filtering Software*, N2H2 (March 2002), available at *http://n2h2.com/pdf/TheFactsonFilters.pdf*.

[21] *See* study by Cory Finnell, *ALA v. U.S.*, 201 F.Supp.2d at 440.

[22] *Id.*



"obscenity, child pornography, and harmful to minors" material accessed through computers in a public library.

Another governmental interest furthered by the Act through this spending clause condition is that Congress is providing an incentive to Internet development. CIPA would create a market for filter technology that private industry can compete for and fill. Research and development will continue to improve filters to meet the demands of the library and school administrators and Information Technology requirements. This institutional market is the toughest test market that filters could be run through, since they will demand that filters have "least restrictive" settings in order to block only the hard-core of child porn and obscenity and only pornographic materials that could be "harmful to minors". CIPA will actually foster the improvement and management of filter technology that both institutions and private uses will benefit from in the future.

The court discussed some suggested alternatives as "less restrictive" than filtering, including the use of "Internet use policies", recessed monitors, privacy screens, separate viewing areas, or monitoring patrons by placing terminals in visible locations. *ALA v. U.S.*, at 424. However, these unhelpful alternatives are not only ineffective but also create a kind of "sexually oriented business" within the library, fostering harassment, assault, stalking, public masturbation, exposure to disease and harmful exposure to children of graphic sexual images. In light of the seriousness of the problem Congress was trying to address, the lower court's suggestions are completely inadequate. None of these has curbed the huge problem confronting public libraries that offer Internet access to patrons.

A serious problem deserves a serious solution. CIPA provides a real solution to confront this problem. CIPA was carefully drafted so as to be both narrowly tailored and a least restrictive means to accomplish the Government's

compelling interests. We respectfully submit that CIPA survives reasonable review and deserves to be upheld by this honorable Court.

## IV. EVEN IF THE CIPA AMENDMENTS WERE UNCONSTITUTIONAL, THIS COURT SHOULD STILL REVERSE THE DECISION OF THE DISTRICT COURT

"In exercising its power to review the constitutionality of a legislative Act, a federal court should act cautiously." *Regan v. Time, Inc.*, 468 U.S. 641, 652-53 (1984). Ruling a statute unconstitutional "frustrates the intent of the elected representatives of the people." *Id.*

The plain language and the Congressional history of CIPA, clearly shows Congress intended to fix an objectionable problem with the Telecommunications Act and Library Services and Technology Act ("LSTA").[23] Indeed, Congress acted expressly *because* the original provisions of these statutes were objectionable, (*i.e.*, since, if unaddressed, the federal assistance could subsidize Internet access to large amounts of illegal hard-core obscenity and child pornography, all inconsistent with the educational purposes behind the statute). *See Children's Internet Protection Act: Hearing on S. 97 Before the Senate Comm. on Commerce, Science and Transportation*, 106th Cong., 1st Sess. (1999). *See also* S. Rep. No. 141, 106th Cong., 1st Sess. 2 (1999), and S. Rep. No. 226, 105th Cong., 2nd Sess. 5 (1998).

Moreover, Congress, in amending the Telecom Act and LSTA, expressly chose to include a "separability" clause covering only the provisions within CIPA (*i.e.*, if a court found any of CIPA's amendments to the Telecom Act or LSTA unconstitutional, that Congress stated its intent to

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[23] Telecommunications Act, "E-rate discounts", 47 U.S.C. § 254; Library Services and Technology Act, 20 U.S.C. § 9101, *et seq*.



effectuate as many of the other CIPA provisions as possible). *See ALA v. U.S.*, 201 F.Supp.2d at 495, n.37 (discussing the separability provisions). Congress could have chosen to promulgate a broader severability clause covering the entire statutes as amended, but it did not.

*Amici* suggest the reason Congress did not do so was because the evidence before it revealed that federal assistance to libraries was used to access hard-core obscenity and child pornography. Confronted with this problem, the elected representatives of the people chose to address the objectionable situation by refusing to assist such programs unless they implemented a technology protection program.

In deciding whether it may sever an unconstitutional amendment and save the remainder of a statute, a court must look to the intent of the legislature. *Cf. Regan v. Time, Inc.*, 468 U.S. at 653. Although a presumption of severability exists, *Amici* suggests that where it is evident that the Legislature would not have re-enacted the original provisions of the statute, independently of the unconstitutional amendment, the court should not sever just the invalid part since what is left is no longer operative as a law intended by the legislature. *Cf. Regan v. Time, Inc.*, 468 U.S. at 653, citing *Buckley v. Valeo*, 424 U.S. 1, 108-09 (1976) (quoting *Champlin Refining Co. v. Corporation Comm'n of Oklahoma*, 286 U.S. 210, 234 (1932)). Such is the case here.

Through its Congressional history and by its plain language in CIPA, Congress expressed its clear intent that federal assistance under the Telecom. Act's "E-rate discounts" and LSTA no longer should go to libraries for computers and Internet access unless the library had an Internet safety policy that includes filtering illegal pornography.[24] By judicially requiring Congressionally

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[24] "E-rate", Telecom Act, 47 U.S.C. § 254 (h)(6)(B) & (C) LSTA, 20 U.S.C. § 9134 (f)(1)(A)

appropriated assistance to be disbursed without the safety policy, the district court did more than merely find the CIPA amendments to the statute unconstitutional. It, in essence, promulgated a legislative policy from the bench, directly adverse to the clearly expressed policy of the more politically accountable branches of government.

## CONCLUSION

For all these reasons, the decision of the District Court should be reversed.

Dated: January 10, 2003 Respectfully submitted,

Kristina A. Bullock
*Counsel of Record*
Bruce A. Taylor
Janet M. LaRue
*Co-Counsel*



## DESCRIPTIONS OF *AMICI CURIAE*

The **NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES** (NLC) is a non-profit corporation and educational organization specializing in supporting law enforcement through training, advice, legal research and briefs, and direct trial and appellate assistance to federal, state, and local prosecutors, police agencies, and legislators throughout the United States, in several foreign countries, and United States Senators and Representatives as Members of Congress.

The NLC focuses on constitutional, legislative, trial, law enforcement, and other legal issues related to obscenity, child pornography and sexual abuse, broadcast indecency, Internet and World Wide Web regulations and legal obligations, display and dissemination of materials harmful to minors, prostitution, public nuisances, indecent exposure, and the regulation, licensing, and zoning of sexually oriented businesses. (*www.NationalLawCenter.org*)

NLC and its counsel have filed numerous friend of the court briefs in this Court and in other federal and state cases involving First Amendment issues, including; *Alexander v. United States*, 509 U.S. 544 (1993) (RICO-obscenity, forfeiture); *United States v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied*, 519 U.S. 820 (1996) (Internet BBS obscenity); *Crawford v. Lungren*, 520 U.S. 1117 (1997) (adult token news racks for harmful to minors pornography); *Reno v. ACLU*, 521 U.S. 844 (1997) (Communications Decency Act, "CDA") *Free Speech Coalition v. Reno*, N.D. Cal. (1997), unpublished, No. C97-028SC, 1997 WL 487758, and Ninth Circuit No. 97-16536, 198 F.3d 1083 (9th Cir. 1999), and *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002) (computerized synthetic child pornography, 18 U.S.C. 2252A), and *Ashcroft v. ACLU*, 122 S.Ct. 1700 (2002) (Child Online Protection Act, "COPA").

**CONCERNED WOMEN FOR AMERICA** (CWA) is the nation's largest public policy organization for women. CWA is located in Washington, D.C. and provides policy analysis, legislative assistance, and research for pro-family organizations. Its research and publications on the impact of pornography have been distributed to scholars, institutions, organizations, and citizens across the Country. (*www.CWFA.org*)

The issues in this case directly affect the physical, psychological and emotional well being of children, parents and communities throughout the United States.

CWA has filed *amicus curiae* briefs in this Court, *United States of America v. Playboy Entertainment Group, Inc.* (cable indecency), and other federal and state courts on the subject of pornography, including an *amicus* brief in the court below in defense of CIPA, *American Library Ass'n v. U.S.* and *Multnomah County Public Library v. U.S.*, E.D. Pa. Nos. 01-CV-1303, 01-CV-1322.

CWA's Chief Counsel (Co-Counsel herein) has also filed briefs with this Court on the subject of pornography: *Knox v. U.S.* (child pornography); *Crawford v. Lungren* (material harmful to minors); and in other federal and state courts on this subject of pornography: *Crawford v. Lungren* (9th Cir. 1996) (material harmful to minors); *State v. Stoneman* (Oregon Supreme Court 1996)(child pornography); *People v. Wiener* (California Appellate Court 1994) (obscenity).



**THE NATIONAL COALITION FOR THE PROTECTION OF CHILDREN & FAMILIES** (NCPCF) (formerly known as the National Coalition Against Pornography or "N-CAP") is a national public education and citizen advocate organization that organizes and educates community leaders and works to increase public awareness of the harm caused to the American family by obscene, indecent, and other pornographic and harmful materials. The Coalition is active at local and national levels, both in this country and in countries around the world, in its efforts to educate the public on the harms which illegal, violent, and degrading pornography inflicts upon children and families. (*www.NationalCoalition.org*)

The Coalition has formed local and regional citizen organizations in communities across the Country in order to bring local and national leadership to this important issue and operates a Model Cities America program to foster participation by community, civic, religious, and business leaders to assist public officials and law enforcement efforts to improve and enforce existing laws against unlawful pornography and sexually oriented business activities. Its Chairman is the Reverend Dr. Jerry Kirk and its President is Frederic R. Schatz, M.B.A.

The Coalition is also affiliated with the Religious Alliance Against Pornography ("RAAP"), which is an international organization of church and religious leaders to educate people about the destructive influence of pornography and its offense to public morality, private virtue, and religious principles. The co-chairmen of RAAP are His Eminence William Cardinal Keeler, Archbishop of Baltimore, and the Reverend Dr. Jerry Kirk.

**CITIZENS FOR COMMUNITY VALUES** (CCV) is a First Amendment, free speech, public policy organization that exists to promote Judeo-Christian moral values and works to reduce destructive behaviors contrary to those values, through education, active community partnering, and empowering individuals at the local, state and national levels. The primary issues that the organization addresses, through citizen and legal actions, are vigorous enforcement of obscenity laws; constitutional regulations, licensing and zoning of sexually oriented businesses; protecting children from harmful sexual materials; and opposing normalization of unhealthy sexual behaviors. (*www.CCV.org*)

CCV has served citizens and families in Greater Cincinnati and the State of Ohio for nearly two decades since its founding in 1983. Our staff and officers work with pro-family, law enforcement, and public policy organizations across the Country. CCV also serves as the Ohio Family Policy Council, which is affiliated with Focus on the Family, of Colorado Springs, an international ministry dedicated to the preservation of traditional values and the institution of the family.

CCV's leadership in fostering and maintaining high community standards in Cincinnati has brought about a constant inquiry from citizens across our Nation who want to know how to achieve the same benefits in their communities. According to U.S. News & World Report, CCV "...has become one of the largest local grassroots organizations of its type in the nation." Because of the consistent local community involvement of its citizens, Greater Cincinnati, the nation's 23rd largest metropolitan area, has the seventh lowest crime rate of the thirty-eight metropolitan areas that have 1.5 million or more residents.



## CERTIFICATE OF SERVICE

Three copies of this BRIEF OF *AMICI CURIAE* were served upon the attorneys for the parties by deposit in the U.S. Mails, first-class postage prepaid, on the 10th day of January, 2003, by Byron Adams Printers, addressed to:

Hon. Theodore B. Olson
Solicitor General
Edwin S. Kneedler, Esq.
Deputy Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2201
Fax: 202-514-8844
*Counsel for Appellants*

Paul M. Smith, Esq.
Theresa A. Chmara, Esq.
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005
(202) 639-6000
Fax: 202-639-6066
*Counsel for ALA Appellees*

Christopher Hanson, Esq.
Ann Beeson, Esq.
ACLU Foundation
125 Broad Street
New York, NY 10004
(212) 549-2500
Fax: 212-549-2651
*Counsel forMultnomah County and ACLU Appellees*

All parties required to be served have been served.
(Copies of this brief were also emailed to above counsel.)

So certified,
Kristina A. Bullock
Bruce A. Taylor
KristinaBullock@NationalLawCenter.org
BruceTaylor@NationalLawCenter.org
NLC: (703) 691-4696, Fax: -4669